

BEDSIDE MEDICINE FOR BEDSIDE DOCTORS

An Open Forum for brief discussions of the workaday problems of the bedside doctor. Suggestions of subjects for discussion invited.

ON THE OWNERSHIP OF ROENTGEN FILMS*

H. J. ULLMANN, M. D. (Santa Barbara Cottage Hospital, Santa Barbara).—A physician bases his diagnosis on the interpretation of the history and of the results of the physical examination. Under physical examination is included laboratory tests; and under these the results of the roentgen examination. These roentgen findings are the interpretation of shadows found on the films and fluoroscopic screen by one skilled in such interpretation. In addition it is frequently necessary for the roentgen specialist to take into consideration the history and other factors before arriving at a conclusion. In short, a roentgen examination is a consultation of the attending physician with another physician especially skilled in interpreting the results of such a procedure.

Unfortunately many patients and a few physicians look upon a roentgen examination as the taking of photographs and that these photographs can be looked at and a diagnosis of the patient's disease made by anyone, or at least by anyone who has a degree of M. D., D. D. S., D. Osteopathy, D. Chiropractic, D. Naturopathy, D. of Christian Science, or a registered nurse. And not infrequently a layman will state positively that it is obviously shown by the films that a fracture is improperly set when actually the result of the reduction is as perfect as is humanly possible.

It would be most unusual to have a patient refuse to pay the charge for a differential blood count until the stained smear had been delivered to him, or for his B. M. R. until he had received the manometer tracings from which the rate is calculated. Yet such a demand would, in many instances, be no more absurd than the demand for the films taken during a gastro-intestinal examination. This same patient might, in justice, demand that the smears be submitted to another physician for a check-up on the interpretation, or that the roentgen films be sent to another roentgenologist for further consultation, and this is not infrequently done. But the possession of the smears or films by the patient would do him no good, and in addition would deprive the consultant of the evidence on which he based the report of this examination. Fortunately, the majority of patients who remand the films or x-ray photographs, as they call them, will appreciate the situation and withdraw their claim if the roentgenologist is willing to explain the situation in a friendly manner. If one persists, contending that he was charged for an x-ray photograph, and intends to

have what he paid for, the physician can only answer that he was not charged for x-ray photographs but for the physician's opinion as a consultant in interpreting the results of the exploration of his, the patient's, body by means of the x-ray, and that films were taken only as an incidental to such exploration and are part of the consultant's office records of the examination and consultation. If the bill has been rendered for a certain number of x-ray films, such a contention on the part of the physician is difficult to maintain, for he has rendered his bill as a photographer and not as a consultant. But if, as it should, the bill reads for professional services, roentgen examination of the gastro-intestinal tract, and consultation, the patient will usually see the point. If he still refuses, a reference to letting the court decide will usually end the discussion. It is far better, however, to spend fifteen or even thirty minutes tactfully explaining the situation to an incensed patient and have him leave the office as a friend who when he entered had no idea of the work and skill involved in his examination than to have him leave as an enemy who feels that the physician has unjustly refused to give him something for which he has paid.

Some years ago when visiting Doctor Case at Battle Creek, I saw a notice in the roentgen department which explained the situation so well that, with some additions, I adopted it for a notice in the roentgen department at the Cottage Hospital in Santa Barbara during the period when I was its director.

"Patients are sent to this department for examination and consultation and are not entitled to plates, films, or prints. Films in the hands of patients lead to false interpretation, multiplicity of advice, and bad results."

A question asked by a patient who had read the notice often led to a friendly discussion of roentgen examinations in general, and demands for films were a rare occurrence.

Why is it necessary for the roentgenologist to keep the films instead of delivering them to the patient? A chronic osteomyelitis is being watched from week to week with films taken at regular intervals. But the only thing the surgeon wants—comparison of films—cannot be had, because the patient to whom the earlier films have been delivered has mislaid or lost them because he was "tired of having them kicking around." The same story can be told of repeated lung examinations for a progressing or regressing tuberculosis, gastric or duodenal ulcer, or a mediastinal mass.

Fortunately, a decision has finally been made on the ownership of films (*Journal of the American Medical Association*, November 21, 1931,

* For some suggested forms of notices to be used by physicians who wish to inform patients concerning the ownership of x-ray plates, see page 50.

Volume 97, Number 12, page 1542), so that a physician unfortunate enough to be obliged to defend his stand in court has a precedent.

For protection, however, a notice similar to the one described should be in every office and hospital laboratory, and bills should be rendered for professional services, examination, and consultation. Last, but most important, is to remember that a sympathetic, friendly, tactful explanation is all that is needed in ninety-nine of every one hundred disputes.

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HENRY SNURE, M. D. (1501 South Figueroa Street, Los Angeles).—The question of who owns a roentgenogram is one which daily causes much misunderstanding between the patient, the referring physician, and the roentgenologist. The average patient believes that when he has paid for a roentgen-ray examination, he has "paid for the pictures," and is entitled to them. If the condition for which the examination was made is a chronic one and requires repeated observations, the referring physician often feels that the films rightfully belong to him. Needless to say, the roentgenologist considers them a part of his medical record and as such to be his property. Again, a hospital may lay claim to x-ray films as part of their record. However, since the underwriters of fire insurance have made it very expensive to properly store films in certain cities, the desire to claim ownership of x-ray films has somewhat lessened. Films are often left in court as part of a legal record.

What is an x-ray film? When sold by the manufacturer to the dealer it is a commodity comparable to an artist's canvas, legal forms, or writing paper. It is sold to the roentgenologist as so much raw material. After the film has been used to record parts of the patient's anatomy by means of a roentgen-ray exposure, it is no longer a commodity but a medical record of some particular person and can be used for no other purpose. It is as much an integral part of the roentgenologist's record as the case history of the internist or the tissue slide of the pathologist. As far as I know, there are no laws in this state requiring a physician to furnish each patient with a copy of his medical history or a tissue slide of a tumor that has been removed from a patient. No one believes that a roentgen-ray examination, consisting of a fluoroscopic observation only, entitles the patient to a portion of the apparatus.

What the patient really pays for is the diagnosis or interpretation and not so many square inches of film. If the roentgen films are half as dangerous as some fire inspectors believe them to be, then by all means they should be kept in one place under ideal conditions and not scattered throughout the homes, hotels, and offices of the land; the safety of the patient as well as the safety of others should be paramount.

A recent decision¹ in Michigan where a patient refused to pay his hospital bill unless the roentgenograms were given to him was rendered in favor of the hospital. The court made it clear that

the patient paid for the diagnosis and not the material. The court said that the protection of the hospital might depend upon the roentgenogram and for that reason should be retained by the hospital. However, the judgment in favor of the hospital was by default because the patient did not appear to contest the suit; what a higher court might decide is problematical. It is not unreasonable to consider that the information obtained from a film should be classified as a privileged communication, the details of which should be known only to the physician in charge.

In certain states it has been decided that a photographer retains ownership of the negative from which prints are made for his client. It would seem that a medical report based on observations made of the roentgenograms would be somewhat similar to the prints.

In a case² in New York where the patient was accused of withholding roentgenograms, the court said: "The evidence shows that nobody but an x-ray expert could tell anything from the plates, and that if they had been produced they would have done the court, jury, or the defendant's ordinary physicians no good. I do not think that the doctrine that an ordinary photograph is the best evidence of what it contains should be applied to x-ray pictures. They constitute an exception to the rule concerning ordinary documents and photographs, for the x-ray pictures are not, in fact, the best evidence to laymen of what they contain. Generally they are no evidence at all, signifying nothing whatever except to the expert. The opinion of the expert is the best evidence of what they contain—the only evidence."

In actual practice it is conceded that the film belongs to the roentgenologist. He often expends considerable money to properly store exposed films. Some of the films are used in teaching medical students and nurses; also for preparing papers presented to medical societies. A small percentage of the films that are several years old are recalled from the file for further study of cases of urinary calculi, tuberculosis, gastro-intestinal disease, etc.; also to prove the absence or presence of some previous injury in legal cases. It is understood that all the filed roentgenograms are carefully indexed and cross-indexed, otherwise ownership of the same would be useless.

When films are given to the patient they are frequently damaged in a short time and are useless as a record or are lost. Not infrequently the patient may be visiting far from home, yet details of his previous roentgenograms may be necessary for an immediate operation and they can be promptly obtained from the roentgenologist on request by wire. On the other hand, to describe all the minute detail depicted, for instance on the chest film of a case of widespread tuberculosis, is not feasible. Therefore, if the patient happens to be a tourist, I have either given him the films to deliver to his family physician, or better still,

¹ Hurley Hospital vs. Gage, Genesee County, Mich., April, 1931.

² Marion vs. Coon Construction Co., New York, 1913, Third Dept., Vol. 157, App. Div. 95.

send the films direct to his physician where they would be more available for future study by the patient's roentgenologist or physician.

I am sure that most roentgenologists will not argue about the ownership of the film if the best interests of the patient demand that they be sent elsewhere. If the patient changes physicians, the roentgenologist should be permitted to render a copy of a previous report or to consult with the new physician in charge of the case. In this connection there is an opportunity for the roentgenologist to safeguard the patient against quacks and fakers.

In the last analysis, the ownership of roentgenograms is a legal question and not a medical one. When judgment was rendered in favor of the Hurley Hospital, as previously mentioned, the court pointed out that what was sold to the patient and what he paid for was knowledge and experience, not the material that went into the roentgenograms. In other words, the roentgenologist owns the film and the patient pays for the diagnosis or interpretation.

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ROBERT F. KILE, M. D. (323 Medico-Dental Building, San Francisco).—Ownership of x-ray films is and always has been a somewhat disputed question and assumes different aspects, as the laboratories in which they are taken differ, and also according to the status of the case: as to whether it is clinic, industrial, private, or medico-legal. The only ones in which there is no dispute are the clinic cases, especially in teaching institutions. These films are the acknowledged property of the institution and are simply valuable in that they can be used for teaching purposes.

The entire value of any x-ray examination is the final interpretation of the film, and therefore the report embraces all.

The question of ownership was answered by the Circuit Court of Genesee County, State of Michigan, in the following decision, and I believe should and would be upheld by any court in which a test case might be brought. An excerpt concerning this Genesee County case follows:

"In this case the patient's bill from the Hurley Hospital contained a charge for the making of certain x-ray films. The patient refused to pay that part of the hospital's bill representing the part of the charge referable to the films, unless the roentgenograms were delivered to him. This the hospital refused to do and brought suit against the patient for this part of his bill.

"Judgment was rendered against the hospital in the Justice's Court, but on appeal to the Circuit Court the judgment was reversed.

"The Circuit Court pointed out in its decision that what the hospital had sold and the patient had paid for was not the material which went into the roentgenograms, but knowledge and experience. Furthermore, that the protection of the hospital might depend largely upon the proper preservation of the roentgenograms, and that the films properly belonged in the hospital records."

ADDENDA—X-RAY OWNERSHIP NOTICES

On the Ownership of Roentgen (X-Ray) Films and Prints.—At the meeting of the California Medical Association Council held on May 28, 1932, some form notices dealing with roentgen films and prints were considered.

The Council gave its approval to the form notices which follow. It is hoped these will prove of service to members of the California Medical Association. The attention of members of the California Medical Association is called thereto, and also to the Bedside Medicine symposium in this number of CALIFORNIA AND WESTERN MEDICINE, dealing with the subject of ownership of roentgen films and prints. (See page 48.)

Forms approved by the Council are printed below.

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Form 1.—Physician's Office Form.

NOTICE TO PATIENTS REGARDING ROENTGEN (X-RAY) FILMS AND PRINTS

Any roentgen (x-ray) films or prints thereof made of any patient or taken for the purpose of aiding in diagnosis, are the basis for the opinion given and/or diagnosis made, and the charge made therefor is for the interpretation of the films and the diagnosis made therefrom, and not for the films themselves, which are a part of the office record of the patient.

Where it is necessary, any other attending physician may see and make full examination of the films, and if necessary the films will be sent for the temporary use of such physician. Reproductions of films will also be made at cost on request of such attending physician.

Under no circumstances can the original films or prints thereof be otherwise taken from the permanent records of this office.

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Form 2.—Hospital Form.

NOTICE TO PATIENTS Roentgen (X-Ray) Department Hospital

Patients are referred to the Roentgen (X-Ray) Department of this hospital for a roentgenological examination. The roentgen (x-ray) films taken are the basis for the interpretation by the consulting roentgenologist, and his opinion when given in consultation with the attending physician is an aid in arriving at the final diagnosis.

The charge made therefor is for such interpretation, opinion, and consultation, and not for the films themselves which form a part of the hospital records. Patients, therefore, are not entitled to these films or prints thereof.

These films or prints require special professional skill and experience for their proper interpretation, and therefore will not be shown to patients except by permission, and in the presence, of the attending physician.

On request of the attending physician the films or reproductions thereof may be temporarily withdrawn from the hospital records for use by another physician. An extra charge of \$..... is made for each reproduction.

Under no circumstances can the original films or prints thereof be otherwise taken from the permanent records of this department.

No exception can be made to these rules. Please do not ask that any be made.

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Director, Roentgenology Department,
..... Hospital.

Approved:
Director of Hospital.